

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MOHAMED JOHN AKHTAR and LA BUCA  
RESTAURANT, INC.,

Plaintiffs,

-against-

ERIC ADAMS, Mayor of the City of New  
York, ROHIT T. AGGARWALA, NEW  
YORK CITY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION, ERIC I.  
EISENBERG and JOHN AND JANE DOES  
ONE THROUGH THIRTY,

Defendants.

23-CV-6585 (JGLC) (VF)

**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

JESSICA G. L. CLARKE, United States District Judge:

This case is referred to Magistrate Judge Figueredo for general pretrial purposes and dispositive motions requiring a report and recommendation. ECF No. 40. Defendants Eric Adams, Rohit T. Aggarwala, and the New York City Department Of Environmental Protection (collectively, the “City Defendants”) and Defendant Eisenberg both filed motions to dismiss. ECF Nos. 24 and 41. On June 5, 2024, Judge Figueredo recommended that both motions be granted and that Plaintiffs be granted leave to amend Counts II, III, and V of the Complaint. ECF No. 72 (“R&R”) at 20. The Court hereby ADOPTS the R&R in its entirety.

A district court reviewing a magistrate judge’s report and recommendation may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Within fourteen days after the magistrate judge has issued their report and recommendation, “any party may serve and file written objections to such proposed findings and recommendations.” *Id.*; *see also* Fed. R. Civ. P. 72(b)(2). A district court reviews *de novo* the portions of the report and recommendation to which objection is made. 28

U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3); *see also Ortiz v. Barkley*, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008). For portions of the report and recommendation to which no timely objection has been made, “a district court need only satisfy itself that there is no clear error on the face of the record.” *Fischer v. Forrest*, 286 F. Supp. 3d 590, 600 (S.D.N.Y. 2018), *aff’d*, 968 F.3d 216 (2d Cir. 2020) (internal citation omitted). “To the extent that the objecting party makes only conclusory or general objections, or simply reiterates the original arguments, the court will review the report and recommendation strictly for clear error.” *Giallanzo v. City of New York*, 630 F. Supp. 3d 439, 450 (S.D.N.Y. 2022). Finally, “new arguments and factual assertions cannot properly be raised for the first time in objections to the report and recommendation, and indeed may not be deemed objections at all.” *Piligian v. Icahn Sch. of Med. at Mount Sinai*, 490 F. Supp. 3d 707, 716 (S.D.N.Y. 2020) (cleaned up).

Plaintiffs’ scant objection (ECF No. 76) to the R&R is conclusory and general, and both mischaracterizes and fails to substantively engage with the reasoning of the R&R. The Court is satisfied that R&R is well-reasoned and committed no clear error.

Defendant Eisenberg asks that the Complaint be dismissed with prejudice due to problematic behavior by Plaintiffs and their counsel. ECF Nos. 74 and 84. The Court has previously admonished Plaintiffs for violation of the Court’s Individual Rules and deadlines. ECF No. 39. Plaintiffs are warned that further disregard for the Court’s Individual Rules and deadlines may result in sanctions, including dismissal with prejudice. However, the R&R appropriately weighed the factors a court should consider when determining if Plaintiffs should be granted leave to replead at this juncture. Plaintiffs shall have **one opportunity** to amend with respect to Counts II, III, and V of the Complaint.

Thus, the R&R is ADOPTED in its entirety. Counts I and IV of the Complaint are DISMISSED with prejudice. Counts II, III, and V are DISMISSED without prejudice. The deadline for Plaintiffs to file a second amended complaint in compliance with this Order is **September 16, 2024**.

The Clerk of Court is directed to terminate ECF Nos. 24, 41 and 82.

Dated: August 19, 2024  
New York, New York

SO ORDERED.

A handwritten signature in blue ink that reads "Jessica Clarke". The signature is written in a cursive style and is positioned above a horizontal line.

JESSICA G. L. CLARKE  
United States District Judge